

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN PLASKON,

Plaintiff,

v.

PUBLIC HOSPITAL DISTRICT NO. 1 OF
KING COUNTY d/b/a VALLEY MEDICAL
CENTER, *et al.*,

Defendants.

Case No. C06-0367RSL

ORDER GRANTING MOTION TO
FILE AMENDED ANSWER

This matter comes before the Court on defendants' motion for leave to file an amended answer to plaintiff's second amended complaint. (Dkt. #18). Defendants seek to add counterclaims in this matter. The counterclaims include a claim for malicious prosecution and all relate to defendants' contention that plaintiff has initiated this lawsuit for an improper purpose.

Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The Court considers four factors in deciding whether to grant leave to amend: "bad faith, undue delay, prejudice to the opposing party, and the futility of amendment." Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994). A proposed amendment is futile if it could be defeated by a motion to dismiss or if plaintiff cannot prevail on the merits. See, e.g., Smith v. Commanding Officer,

1 555 F.2d 234, 235 (9th Cir. 1977).

2 Plaintiff has not filed a response to the motion. When defendants filed this motion and at
3 the time that plaintiff's opposition was due, plaintiff was represented by counsel. In the interim,
4 however, his counsel successfully moved to withdraw. It is therefore unclear whether plaintiff's
5 failure to file a response represents non-opposition or whether other factors caused the non-
6 opposition. The Court, therefore, will not assume that the failure to respond is a concession that
7 the motion has merit, and scrutinizes the motion carefully.

8 Defendants have not previously sought leave to amend. The amendment will not cause
9 delay because no discovery has been conducted in this matter and the trial date is almost six
10 months away. There is no evidence of bad faith, futility, or that the amendment will prejudice
11 plaintiff. There will likely be substantial overlap between the discovery on plaintiff's underlying
12 claims and on the counterclaims.

13 Accordingly, the Court GRANTS the motion. Defendants may file their amended answer
14 to plaintiff's second amended complaint in the docket within ten days of the date of this order.

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16 DATED this 19th day of June, 2007.

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20 Robert S. Lasnik
21 United States District Judge
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